IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

OP.No. 4945 of 1998(S)

(*AGAINST THE ORDER IN RA 52/COCH/97 IN ITA.170/COCH//1992 of I.T.A.TRIBUNAL,COCHIN BENCH)*

PETITIONER:

THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM.

BY ADV. SHRI GEORGE K. GEORGE, SC, IT.
ADV. SRI.P.K.RAVINDRANATHA MENON (SR.)
ADV. SRI.N.R.K.NAIR, SC FOR IT

RESPONDENT:

SHRI M.P. PHILIP, TRIVANDRUM.

BY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 4945 of 1998(S)

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A	:	TRUE COPY OF THE ORDER OF THE ASSISSING OFFICER DATED 25.03.1991
ANNEXURE B	:	TRUE COPY OF THE ORDER OF THE DEPUTY COMMISISIONER OF INCOME TAX (APPEALS) DATED 19.11.1991.
ANNEXURE C	:	TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 08.01.1997
ANNEXURE D	:	TRUE COPY OF THE REFERENCE APPLICATION & ITS ENCLOSURES DATED 24.03.1997.
ANNEXURE E	:	TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 14.07.1997.

/TRUE COPY/

P.S. TO JUDGE.

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 4945 OF 1998 S

Dated this the 25th July, 2007

JUDGMENT

H.L.DATTU, C.J.

The Revenue, being aggrieved by the orders passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA.No.170 of 1992 for the assessment year 1988-89, had filed an application before the Tribunal under Section 256(1) of the Income Tax Act with a request to the Tribunal to state the case and refer the question of law arising out of the orders passed in ITA.No.170 of 1992 for consideration and decision of this Court. The Tribunal has rejected the application/ petition. Therefore, the Revenue is before us in this Original Petition filed under Section 256(2) of the Income Tax Act, 1961. The Revenue requests us to direct the Tribunal to refer the following question of law for our consideration and decision. The same is as under:

> "Whether, on the facts and in the circumstances of the case, the pension received by the assessee from Government of Malaysia in India could be subjected to tax under the I.T.Act, 1961?"

2. In our opinion, at this stage it may not be necessary to direct the Tribunal to state the case and refer the aforesaid question of law in view of the decision of this Court in **Commissioner of Income Tax** v. **V.K.Vasudevan Pillai** [(1996) 222 ITR 693].

3. In view of the above, the Original Petition filed by the Revenue requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

O.P.NO. 4945 OF 1998 S

JUDGMENT

25th July, 2007